

FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

FEB 04 2005
FEDERAL ELECTION
COMMISSION
SECRETARIAT

2005 FEB -4 P 4: 52

FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

MUR: 5565
DATE COMPLAINT FILED: October 13, 2004
DATE OF NOTIFICATION: October 20, 2004
DATE ACTIVATED: December 6, 2004

EXPIRATION OF STATUTE
OF LIMITATIONS: April 1, 2009

COMPLAINANT: Harry Sherr

RESPONDENTS: Swift Boat Vets and POWs for Truth
Roy Hoffman, Alvin Horne, John O'Neil, and
Weymouth Symmes

**RELEVANT STATUTES AND
REGULATIONS:** 2 U.S.C. § 434(f)(3)
2 U.S.C. § 441b
11 C.F.R. § 114.10

INTERNAL REPORTS CHECKED: Electioneering Communications Reports

FEDERAL AGENCIES CHECKED: Internal Revenue Service

1 **I. INTRODUCTION**

2 The complaint alleges that Swift Boat Vets and POWs for Truth ("Swift Boat Vets") and
3 its officers violated the Federal Election Campaign Act of 1971, as amended, (the "Act") by
4 making prohibited expenditures for electioneering communications. Specifically, the complaint

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1 contends that Swift Boat Vets is a corporate entity and thus may not make disbursements for
2 electioneering communications. In response to the complaint, Swift Boat Vets denies that it is
3 incorporated and claims that it has fully complied with the Act and regulations regarding
4 disbursements for electioneering communications. Based on a review of publicly available
5 information, this Office recommends that the Commission find no reason to believe that Swift
6 Boat Vets violated the Act in this matter and close the file.

7 **II. FACTUAL AND LEGAL ANALYSIS**

8 According to electioneering communications reports filed with the Commission, Swift
9 Boat Vets received \$20,941,845 in donations for television advertisements that cost \$18,813,850.
10 In its original filings with the Commission, Swift Boat Vets checked the box stating that it was a
11 qualified nonprofit corporation under 11 C.F.R. § 114.10. The complaint correctly notes that
12 qualified nonprofit corporations must be organized under Section 504(c)(4) of the Internal
13 Revenue Code, while Swift Boat Vets is organized under Section 527 of the Internal Revenue
14 Code. *See* 11 C.F.R. § 114.10(c)(5). Consequently, the complaint contends that Swift Boat Vets
15 made prohibited corporate expenditures to pay for its electioneering communications. *See*
16 2 U.S.C. § 441b(b)(2).

17 After the complaint was filed, Swift Boat Vets amended all of its electioneering
18 communications reports to remove its designation as a qualified nonprofit corporation. Swift
19 Boat Vets now states that the original designation was "inadvertent" and that it is an
20 unincorporated organization.² A search of public records confirms that Swift Boat Vets has not
21 incorporated. Accordingly, the sole factual basis for the complaint's allegations—Swift Boat
22 Vets' self-designation as a qualified nonprofit corporation on its electioneering communications

² Swift Boat Vets also states in response to the complaint that it maintains separate bank accounts for corporate and individual donations and that it uses only donations from individuals to fund electioneering communications.

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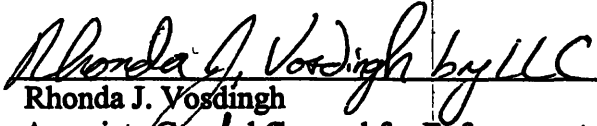
1. reports—has been disproved. Therefore, this Office recommends that the Commission find no
2. reason to believe that Swift Boat Vets or its officers violated the Act in this matter and close the
3. file.

III. RECOMMENDATIONS

1. Find no reason to believe that Swift Boat Vets and POWs for Truth, Roy Hoffman, Alvin Horne, John O'Neil, and Weymouth Symmes violated the Act in this matter;
2. Approve the appropriate letters; and
3. Close the file

2/4/05
Date


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Mark D. Shonkwiler
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